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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/785,649	02/24/2004	Craig D. Thompson	55827US004	3748
32692	7590	07/26/2006	EXAMINER	
3M INNOVATIVE PROPERTIES COMPANY			BUTLER, MICHAEL E	
PO BOX 33427			ART UNIT	
ST. PAUL, MN 55133-3427			PAPER NUMBER	
			3653	

DATE MAILED: 07/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/785,649

Applicant(s)

THOIMPSON

Examiner

Michael Butler

Art Unit

3653

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 18-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 18-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>022420004</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Priority*

1. Applicant's claim of priority to application **10/094670** filed 3/11/2002 is acknowledged.

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim(s) 19-24 is/are rejected under 35 U. S. C. 112 second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

There is insufficient antecedent basis in the claims for the following term(s): (Re: cl 19) the elastomeric band, the flexible plate, the pair of creases; (Re: cl 20) the elastomeric band he flexible sheet, the top of the container; (Re: cl 21) the flexible plate, (Re: cl 22) the flexible plate; (Re: cl 23) the flexible plate, the sheet; (Re: cl 24) the pair of flexible plate, the openings, the first pair opposing edges.

4. The following is a quotation of the fourth paragraph of 35 U.S.C. 112:

...a claim in dependent form shall contain a reference to a claim previously set forth and then specify a further limitation of the subject matter claimed. A claim in dependent form shall be construed to incorporate by reference all the limitation of claim to which it refers.

5. Claims 19-24 are rejected under 35 U. S. C. 112 fourth paragraph, as being improper dependent claims. A dependent claim must depend from an otherwise set forth claim. Applicant should either restructure each claim as an independent claim or predicate dependency by reference from an otherwise set forth claim.

*Claim Rejections - 35 USC § 102*

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States
- (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

7. Claims 19-20, 22-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Mandel 2634855 which discloses all the claimed elements including:

(Re: cl 19) wherein the flexible plate further comprises:  
a first pair of opposing edges (6);  
a pair of creases spaced from and generally parallel to the first pair of opposing edges (13/14)  
wherein the elastomeric band engages the flexible plate so as to bend the flexible plate along the pair of creases (18)  
(Re: cl 20) wherein the elastomeric band urges a top of the flexible sheet toward the top of the container (c2 L 34-44)  
(Re: cl 22) wherein the flexible plate is a paper based material (c2 L 34-44)  
(Re: cl 23) wherein the flexible plate further comprises:  
one or more openings through the sheet (7/8)  
(Re: cl 24) wherein the pair of flexible plate further comprises:  
a first pair of opposing edges and wherein the one generally parallel to the first pair of opposing edges or more openings are disposed (c2 L 30-55 ).

8. Claims 18-21, 23-30, and 32 are rejected under 35 U.S.C. 102(e) as being anticipated by Simpson 6550636 which discloses all the claimed elements including:

(Re: cl 18) A dispenser for sheet material comprising:  
a container (8 fig 1) including a top and an opening (16) defined in the top of the container;  
a flexible plate sized to fit within the container (32),  
an elastomeric band engaged with the flexible plate acting to bias at least portions of the flexible plate into a generally curved state (30); and

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a stack of sheet material positioned within the container between the top of the container and the flexible plate (14 fig 1), the stack comprised of a plurality of sheets of material which are generally vertically aligned and which are releasably adhered to each other along opposite edges of successive sheets by at least one band of pressure sensitive adhesive wherein a first sheet of the stack is capable of passing through the opening in the top of the container (c2 L 40-67)

(Re: cl 19) wherein the flexible plate further comprises:

a first pair of opposing edges, a pair of creases spaced from and generally parallel to the first pair of opposing edges, wherein the elastomeric band engages the flexible plate so as to bend the flexible plate along the pair of creases (c 2 L 40-67;c3 L 23-41)

(Re: cl 20) wherein the elastomeric band urges a top of the flexible sheet toward the top of the container (c 2 L 40-67;c3 L 23-41)

(Re: cl 21) herein the flexible plate is a plastic material (c3 L 4-12)

(Re: cl 23) wherein the flexible plate further comprises:

one or more openings through the sheet (c3 L 23-41)

(Re: cl 24) wherein the pair of flexible plate further comprises:

a first pair of opposing edges and wherein the one generally parallel to the first pair of opposing edges or more openings are disposed (c 2 L 40-67;c3 L 23-41)

(Re: cl 25) A dispenser for sheet material comprising:

a container having a bottom, and a top (8 fig 1), the top defining an opening (16 fig 1), a stack of sheet material positioned within the container (14), the stack comprised of a plurality of vertically aligned sheets of material which are releasably adhered to each other along opposite edges of successive sheets by a narrow band of pressure-sensitive adhesive, a first sheet of material capable of passing through the opening in the top of the container (c2 L 40-67 ; c3 L23-41)

a flexible plate generally sized to fit within the dispensing package between the stack of sheet material and the bottom of the dispensing package, the plate having opposing first and second edges (32 fig 1; c 2 L 40-67;c3 L 23-41), and  
an elastomeric band drawing the first and second edges of the plate toward one another (c 2 L 40-67;c3 L 23-41)

(Re: cl 26) wherein the plate further comprises opposing third and fourth edges and wherein the elastomeric band further comprises first and second portions (c3 L 4-12, each side of loop),

the first and second portions positioned between the first and second edges of the plate and secured to opposite sections of the plate, each portion having an unstressed length that is less than a length of one of the third and fourth edges of the plate (c3 L 4-12)

(Re: cl 27) wherein the plate comprises opposing third and fourth edges and a first pair of spaced recesses associated with the third edge and a second pair of spaced recesses associated with the fourth edge, and wherein the band of elastomeric material is positioned in the first and second pair of recesses (c 2 L 40-67;c3 L 23-41)

(Re: cl 28) wherein the plate is a polymer material (c3 L 4-12)

(Re: cl 29) wherein the plate further comprises opposing third and fourth edges, wherein the first and second edges of the plate generally are parallel to one another, and wherein

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the third and fourth edges are formed to define a radially tapered width of the plate (28/38 fig 2; c3 L 4-12)

(Re: cl 30) wherein the plate further comprises opposing third and fourth edges and wherein the plate is formed to define one or more openings through the plate, the openings generally being spaced from the first, second, third and fourth edges (c3 L 23-41)

(Re: cl 32) wherein the plate includes at least one crease, the at least one crease generally being parallel to and spaced from the first and second edges (40/42; c3 L 4-12).

9. Claims 19-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Suess 5979700

which discloses all the claimed elements including:

(Re: cl 19) wherein the flexible plate further comprises:

a first pair of opposing edges;

a pair of creases spaced from and generally parallel to the first pair of opposing edges; wherein the elastomeric band engages the flexible plate so as to bend the flexible plate along the pair of creases

(Re: cl 20) wherein the elastomeric band urges a top of the flexible sheet toward the top of the container(c3 L 30-53)

(Re: cl 21) wherein the flexible plate is a plastic material (c4 L 40-53)

(Re: cl 22) wherein the flexible plate is a paper based material (c4 L 40-53).

10. Claims 23-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Cornell

5363985 which discloses all the claimed elements including:

(Re: cl 23) wherein the flexible plate further comprises:

one or more openings through the sheet (37 fig 1)

(Re: cl 24) wherein the pair of flexible plate further comprises:

a first pair of opposing edges and wherein the one generally parallel to the first pair of opposing edges or more openings are disposed (c3 L 18-50).

### ***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at

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the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claim(s) 18-20 and 22-27 and 29-32 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over Mandel in view of Cornell wherein the former discloses the elements previously discussed and further discloses:

(Re: cl 19) wherein the flexible plate further comprises:

a first pair of opposing edges (6);

a pair of creases spaced from and generally parallel to the first pair of opposing edges (13/14)

wherein the elastomeric band engages the flexible plate so as to bend the flexible plate along the pair of creases (18)

(Re: cl 20) wherein the elastomeric band urges a top of the flexible sheet toward the top of the container (c2 L 34-44)

(Re: cl 22) wherein the flexible plate is a paper based material (c2 L 34-44)

(Re: cl 23) wherein the flexible plate further comprises:

one or more openings through the sheet (7/8)

(Re: cl 24) wherein the pair of flexible plate further comprises:

a first pair of opposing edges and wherein the one generally parallel to the first pair of opposing edges or more openings are disposed (c2 L 30-55 ).

(Re: cl 25,18) A dispenser for sheet material comprising:

a container having a bottom, and a top, the top defining an opening (c2 L 30-55 ),

a stack of sheet material positioned within the container, the stack comprised of a plurality of vertically aligned sheets of material which are releasable, a first sheet of material capable of passing through the opening in the top of the container ;

a flexible plate generally sized to fit within the dispensing package between the stack of sheet material and the bottom of the dispensing package, the plate having opposing first and second edges (c2 L 30-55 ), and

an elastomeric band drawing the first and second edges of the plate toward one another (c2 L 34-44).

(Re: cl 26) wherein the plate further comprises opposing third and fourth edges and

wherein the elastomeric band further comprises first and second portions,

the first and second portions positioned between the first and second edges of the plate and secured to opposite sections of the plate, each portion having an unstressed length that is less than a length of one of the third and fourth edges of the plate

(Re: cl 27) wherein the plate comprises opposing third and

fourth edges and a first pair of spaced recesses associated with the third edge and a

second pair of spaced recesses associated with the fourth edge, and wherein the band of elastomeric material is positioned in the first and second pair of recesses.

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(Re: cl 29) wherein the plate further comprises opposing third and fourth edges, wherein the first and second edges of the plate generally are parallel to one another, and wherein the third and fourth edges are formed to define a radially tapered width of the plate.

(Re: cl 30) wherein the plate further comprises opposing third and fourth edges and wherein the plate is formed to define one or more openings through the plate, the openings generally being spaced from the first, second, third and fourth edges.

(Re: cl 31) wherein the plate is a card stock material (C3 L 23-41)

(Re: cl 32) wherein the plate includes at least one crease, the at least one crease generally being parallel to and spaced from the first and second edges (13,14).

The latter discloses any elements not inherently taught by the former including:

(Re: cl 18) the plate is bias into a generally curved state (20 fig 1)

(Re: cl 25) the sheets are adhered to each other along opposite edges of successive sheets by a narrow band of pressure-sensitive adhesive (c2 L 45-69).

It would have been obvious for Mandel to substitute a planar state on the the plate with a generally curved state because the curved state of the plate can serve as biasing spring complementing the biasing of the band with its own supplemental biasing constant as taught by Cornel and come up with the instant invention. It would have been obvious for Mandel to substitute the stack of sheets with an adhesively adhered stack of sheets as adhesively postable notes and sheets may be temporarily attached to documents for user convenience as taught by Cornel and come up with the instant invention.

13. Claim(s) 18-32 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over Simpson 6550636 in view of Suess 5979700 wherein the former discloses the elements previously discussed and further discloses:

(Re: cl 18) A dispenser for sheet material comprising:  
a container (8 fig 1) including a top and an opening (16) defined in the top of the container;  
a flexible plate sized to fit within the container (32),  
an elastomeric band engaged with the flexible plate acting to bias at least portions of the flexible plate into a generally curved state (30); and



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a stack of sheet material positioned within the container between the top of the container and the flexible plate (14 fig 1), the stack comprised of a plurality of sheets of material which are generally vertically aligned and which are releasably adhered to each other along opposite edges of successive sheets by at least one band of pressure sensitive adhesive wherein a first sheet of the stack is capable of passing through the opening in the top of the container (c2 L 40-67)

(Re: cl 19) wherein the flexible plate further comprises:

a first pair of opposing edges, a pair of creases spaced from and generally parallel to the first pair of opposing edges, wherein the elastomeric band engages the flexible plate so as to bend the flexible plate along the pair of creases (c 2 L 40-67;c3 L 23-41)

(Re: cl 20) wherein the elastomeric band urges a top of the flexible sheet toward the top of the container (c 2 L 40-67;c3 L 23-41)

(Re: cl 21) herein the flexible plate is a plastic material (c3 L 4-12)

(Re: cl 23) wherein the flexible plate further comprises:

one or more openings through the sheet (c3 L 23-41)

(Re: cl 24) wherein the pair of flexible plate further comprises:

a first pair of opposing edges and wherein the one generally parallel to the first pair of opposing edges or more openings are disposed (c 2 L 40-67;c3 L 23-41)

(Re: cl 25) A dispenser for sheet material comprising:

a container having a bottom, and a top (8 fig 1), the top defining an opening (16 fig 1),

a stack of sheet material positioned within the container (14), the stack comprised of a plurality of vertically aligned sheets of material which are releasably adhered to each other along opposite edges of successive sheets by a narrow band of pressure-sensitive adhesive, a first sheet of material capable of passing through the opening in the top of the container (c2 L 40-67 ; c3 L23-41)

a flexible plate generally sized to fit within the dispensing package between the stack of sheet material and the bottom of the dispensing package, the plate having opposing first and second edges (32 fig 1; c 2 L 40-67;c3 L 23-41), and

an elastomeric band drawing the first and second edges of the plate toward one another (c 2 L 40-67;c3 L 23-41)

(Re: cl 26) wherein the plate further comprises opposing third and fourth edges and wherein the elastomeric band further comprises first and second portions (c3 L 4-12, each side of loop),

the first and second portions positioned between the first and second edges of the plate and secured to opposite sections of the plate, each portion having an unstressed length that is less than a length of one of the third and fourth edges of the plate (c3 L 4-12)

(Re: cl 27) wherein the plate comprises opposing third and fourth edges and a first pair of spaced recesses associated with the third edge and a second pair of spaced recesses associated with the fourth edge, and wherein the band of elastomeric material is positioned in the first and second pair of recesses (c 2 L 40-67;c3 L 23-41)

(Re: cl 28) wherein the plate is a polymer material (c3 L 4-12)

(Re: cl 29) wherein the plate further comprises opposing third and fourth edges, wherein the first and second edges of the plate generally are parallel to one another, and wherein

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the third and fourth edges are formed to define a radially tapered width of the plate (28/38 fig 2; c3 L 4-12)

(Re: cl 30) wherein the plate further comprises opposing third and fourth edges and wherein the plate is formed to define one or more openings through the plate, the openings generally being spaced from the first, second, third and fourth edges (c3 L 23-41)

(Re: cl 32) wherein the plate includes at least one crease, the at least one crease generally being parallel to and spaced from the first and second edges (40/42; c3 L 4-12).

Suess discloses and elements not explicitly taught by Simpson including:

(Re: cl 21,31) wherein the flexible plate is a plastic material (c4 L 40-53).

It would have been obvious at the time of the invention for Simpson to construct the plate from a paper cardstock material to minimize fabrication costs as taught by Suess and come up with the instant invention. .

14. Claim(s) 18-32 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over Simpson 6550636 in view of Mandel 2634855 wherein the former discloses the elements previously discussed and further discloses:

(Re: cl 18) A dispenser for sheet material comprising:

a container (8 fig 1) including a top and an opening (16) defined in the top of the container;

a flexible plate sized to fit within the container (32),

an elastomeric band engaged with the flexible plate acting to bias at least portions of the flexible plate into a generally curved state (30); and

a stack of sheet material positioned within the container between the top of the container and the flexible plate (14 fig 1), the stack comprised of a plurality of sheets of material which are generally vertically aligned and which are releasably adhered to each other along opposite edges of successive sheets by at least one band of pressure sensitive adhesive wherein a first sheet of the stack is capable of passing through the opening in the top of the container (c2 L 40-67)

(Re: cl 19) wherein the flexible plate further comprises:

a first pair of opposing edges, a pair of creases spaced from and generally parallel to the first pair of opposing edges, wherein the elastomeric band engages the flexible plate so as to bend the flexible plate along the pair of creases (c 2 L 40-67;c3 L 23-41)

(Re: cl 20) wherein the elastomeric band urges a top of the flexible sheet toward the top of the container (c 2 L 40-67;c3 L 23-41)

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(Re: cl 21) herein the flexible plate is a plastic material (c3 L 4-12)

(Re: cl 23) wherein the flexible plate further comprises:

one or more openings through the sheet (c3 L 23-41)

(Re: cl 24) wherein the pair of flexible plate further comprises:

a first pair of opposing edges and wherein the one generally parallel to the first pair of opposing edges or more openings are disposed (c 2 L 40-67;c3 L 23-41)

(Re: cl 25) A dispenser for sheet material comprising:

a container having a bottom, and a top (8 fig 1), the top defining an opening (16 fig 1), a stack of sheet material positioned within the container (14), the stack comprised of a plurality of vertically aligned sheets of material which are releasably adhered to each other along opposite edges of successive sheets by a narrow band of pressure-sensitive adhesive, a first sheet of material capable of passing through the opening in the top of the container (c2 L 40-67 ; c3 L23-41)

a flexible plate generally sized to fit within the dispensing package between the stack of sheet material and the bottom of the dispensing package, the plate having opposing first and second edges (32 fig 1; c 2 L 40-67;c3 L 23-41), and

an elastomeric band drawing the first and second edges of the plate toward one another (c 2 L 40-67;c3 L 23-41)

(Re: cl 26) wherein the plate further comprises opposing third and fourth edges and wherein the elastomeric band further comprises first and second portions (c3 L 4-12, each side of loop),

the first and second portions positioned between the first and second edges of the plate and secured to opposite sections of the plate, each portion having an unstressed length that is less than a length of one of the third and fourth edges of the plate (c3 L 4-12)

(Re: cl 27) wherein the plate comprises opposing third and fourth edges and a first pair of spaced recesses associated with the third edge and a second pair of spaced recesses associated with the fourth edge, and wherein the band of elastomeric material is positioned in the first and second pair of recesses (c 2 L 40-67;c3 L 23-41)

(Re: cl 28) wherein the plate is a polymer material (c3 L 4-12)

(Re: cl 29) wherein the plate further comprises opposing third and fourth edges, wherein the first and second edges of the plate generally are parallel to one another, and wherein the third and fourth edges are formed to define a radially tapered width of the plate (28/38 fig 2; c3 L 4-12)

(Re: cl 30) wherein the plate further comprises opposing third and fourth edges and wherein the plate is formed to define one or more openings through the plate, the openings generally being spaced from the first, second, third and fourth edges (c3 L 23-41)

(Re: cl 32) wherein the plate includes at least one crease, the at least one crease generally being parallel to and spaced from the first and second edges (40/42; c3 L 4-12).

Mandel discloses and elements not explicitly taught by Simpson including:

(Re: cl 21,31) wherein the flexible plate is a plastic material (c2 L 34-44) .

It would have been obvious at the time of the invention for Simpson to construct the plate from a paper cardstock material to minimize fabrication costs as taught by Mandel and come up with the instant invention.

### ***Double Patenting***

15. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

16. Claims 18, 20, 21, 23, and 24 are rejected under the judicially created doctrine of double patenting over claims 11-12, 1-10, 11-12, 1-12, and 5 respectively of U. S. Patent No. 6749084 to Thompson since the claims, if allowed, would improperly subject applicants to harassment from multiple assignees. The parent application claims cited have all the elements claimed in the

instant application claims. It would have been obvious to incorporate to use a subset of the claimed elements of the narrower claims for simplicity in construction.

***Conclusion***

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Exmr. Michael E. Butler whose telephone number is (571) 272-6937.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene O. Crawford, can be reached on (571) 272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*mek*  
*7/23/06*

  
**PATRICK MACKEY**  
**PRIMARY EXAMINER**